No. 77-1405

In the Supreme Court of the United States

OCTOBER TERM, 1977

IGNACIO AGUILA RAMOS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that he is not deportable as an alien "convicted of two crimes involving moral turpitude" because one of his offenses, statutory rape, is not, he suggests, properly characterized as a crime involving moral turpitude. Petitioner argues, alternatively, that in light of his lawful residence in the United States since the age of six, deportation would deny him due process of law and also constitute cruel and unusual punishment within the meaning of the Eighth Amendment.

1. Petitioner is a native and citizen of Mexico who was admitted to the United States for permanent residence in 1956, when he was six years old. Petitioner was charged with the crime of forcible rape and pleaded guilty, in 1970, to the lesser offense of statutory rape, in violation of

Section 261 of the California Ann. Penal Code (West 1970).[1] In 1973, petitioner was convicted of bank robbery, in violation of 18 U.S.C. 2113(a).

Following the latter conviction, the Immigration and Naturalization Service instituted deportation proceedings against petitioner, on the ground that he had been convicted of two crimes involving moral turpitude after his entry into the United States, within the meaning of 8 U.S.C. 1251 (a)(4). Throughout the proceedings below, petitioner has denied deportability, arguing that statutory rape is not a crime involving moral turpitude. This contention was rejected by the immigration judge, by the Board of Immigration Appeals, and by the court of appeals, which summarily affirmed the Board's decision.

The rulings below were correct. Petitioner has cited no authority in support of his argument that statutory rape does not involve "moral turpitude." Indeed, all the decisions are to the contrary. See, *e.g.*, *Castle* v. *Immigration & Naturalization Service*, 541 F. 2d 1064 (C.A. 4); *Marciano* v. *Immigration and Naturalization Service*, 450 F. 2d 1022 (C.A. 8), certiorari denied, 405 U.S. 997; *Pino* v. *Nicolls*, 215 F. 2d 237 (C.A. 1), reversed on other grounds *sub nom. Pino* v. *Landon*, 349 U.S. 901. In the face of this weighty judicial authority, petitioner has made an insufficient showing that present day mores require a different conclusion.

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[1]Section 261 defined "rape," in pertinent part, as follows:

> Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:
>
> 1. Where the female is under the age of eighteen years; * * *.

The section has since been revised to rename the same crime "unlawful sexual intercourse."

2. Little need be said in response to petitioner's apparent argument that the deportation of *any* long term permanent resident alien is unconstitutional.

The Court has recently restated its adherence to the long established principles which petitioner seeks to overturn. As the Court observed in *Fiallo* v. *Bell*, 430 U.S. 787, 792, it has " 'long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.' " See also *Mathews* v. *Diaz*, 426 U.S. 67; *Hampton* v. *Mow Sun Wong*, 426 U.S. 88.

Petitioner raises none of the issues which troubled the Court—albeit they did not lead to reversal—in cases such as *Galvan* v. *Press*, 347 U.S. 522, and *Harisiades* v. *Shaughnessy*, 342 U.S. 580.[2] There is accordingly no occasion here for a reexamination of this Court's consistent teachings.

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[2]In *Galvan* v. *Press*, *supra*, 347 U.S. at 530-531, the Court observed:

> If due process bars Congress from enactments that shock the sense of fair play—which is the essence of due process—one is entitled to ask whether it is not beyond the power of Congress to deport an alien who was duped into joining the Communist Party, particularly when his conduct antedated the enactment of the legislation under which his deportation is sought.* * *
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> * * * But that the formulation of these [immigration] policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial issues of our body politic as any aspect of our government. And whatever might have been said at an earlier date for applying the *ex post facto* Clause, it has been the unbroken rule of this Court that it has no application to deportation.

The alien in *Galvan* had come to the United States from Mexico thirty six years before, when he was only seven years of age. He had an American citizen wife to whom he had been married for twenty years, and four children who were United States citizens. *Id.* at 532 (Black, J., dissenting).

Harisiades involved substantially identical issues.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

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